Quebecor Printing Dickson, Inc. *and* Graphic Communications International Union, AFL–CIO, CLC. Cases 26–CA–17133 and 26–RC–7760

February 27, 1997

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On September 23, 1996, Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party Union filed answering briefs to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

We adopt, with certain modifications as explained below, the judge's recommendations to sustain the Union's objections alleging that the Respondent interfered with the election by threatening employees with discharge, by soliciting grievances from employees, and by granting improved health care benefits to employees during the election campaign.

1. We adopt the judge's recommendation to sustain the objection alleging that the Respondent granted health care benefits to unit employees in order to persuade them to vote against the Union. In doing so, however, we do not adopt the judge's reasoning that the Respondent had the burden of showing that "it would have been unreasonable to advise the employees of any changes" after the election was held. Rather, we infer improper motive and interference with employee Section 7 rights from all the evidence presented and from the Respondent's failure to present a persuasive business reason demonstrating that the timing of the benefits was governed by factors other than the union campaign. *Springfield Jewish Nursing Home*, 292 NLRB 1266 fn. 3 (1989).

2. We adopt the judge's recommendation to sustain the objection alleging that the Respondent threatened employees with loss of jobs to discourage them from voting for the Union. In doing so, we rely on the judge's findings that the Respondent violated Section 8(a)(1) and engaged in objectionable conduct when Respondent's president, Graham McClean, threatened employees with discharge by telling them 4 days before the election that there was no room in the plant for people like union supporter William Revis or people who had an attitude like his. We infer from the fact that McClean made that comment in the course of an antiunion meeting that he was referring to Revis' support of the Union and not to other conduct on Revis' part that the Respondent found unacceptable. Accordingly, we find it unnecessary to pass on the judge's finding that the comments that the Respondent made regarding plant closings in the leaflets it distributed to employees were also objectionable.

3. Because we have adopted the judge's recommendations to sustain the objections alleging threats of job loss, solicitation of grievances and promises to remedy them, and granting of benefits, we also find it unnecessary to pass on the judge's recommendation to sustain the Union's objections alleging that the Respondent disparately enforced its no-solicitation rule by allowing the antiunion "Think Twice Committee" to campaign inside the plant.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Quebecor Printing Dickson, Inc., Dickson, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(e).

"(e) Within 14 days after service by the Region, post at its facility in Dickson, Tennessee, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Re-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We also find without merit the Respondent's allegations of bias on the part of the administrative law judge. After full consideration of the record and the judge's decision, we perceive no evidence that the judge made prejudicial rulings or demonstrated bias against the Respondent.

[2] In the absence of exceptions, we adopt, pro forma, the judge's recommendation that the Union's Objection 1, involving an alleged objectionable interrogation, be overruled.

[3] In par. 2(e) of his recommended Order, the judge requires that the Respondent, in the event that it has closed or ceased business operations, mail "a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 8, 1995." The relevant date in par. 2(e) of the Order should read "November 9, 1995," which was the date that the Union filed the instant unfair labor practice charge. We shall modify the judge's recommended Order to reflect this correction.

spondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 9, 1995."

IT IS FURTHER ORDERED that the election held November 6 and 7, 1995, in Case 26–RC–7760, is set aside and that this case is severed and remanded to the Regional Director for Region 26 for the purpose of conducting a new election.

[Direction of Second Election omitted from publication.]

Rosalind E. Eddins, Esq., for the General Counsel.
Arnold E. Perl, Esq. and *Todd L. Sarver, Esq.*, of Memphis, Tennessee, and *David McCarthy, Esq.*, of Ornida, Washington, for the Respondent.
Lee W. Jackson, Esq., of Washington, D.C., for the Charging Party.

DECISION

J. PARGEN ROBERTSON, Administrative Law Judge. This matter was heard in Nashville, Tennessee, on April 8 and 9, 1996. The charge was filed on November 9 and amended on December 13, 1995. A complaint issued on January 10, 1996. On January 11, 1996, the Acting Regional Director issued a Report on Objections in Case 26–RC–7760. He directed consolidation of that case with Case 26–CA–17133 for receipt of evidence regarding the Petitioner's objections to conduct of the November 6 and 7, 1995 election.

Respondent, the Charging Party, and the General Counsel were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. All parties filed briefs. Upon consideration of the entire record and briefs filed by the parties, I make the following findings.

I. JURISDICTION

Respondent admitted that at material times it has been a corporation with an office and place of business in Dickson, Tennessee, where it has been engaged in the printing business; that during the 12-month period ending December 31, 1995, it sold and shipped from its facility goods valued in excess of $50,000 directly to points outside Tennessee; and, during the same 12-month period, it purchased and received at its facility goods valued in excess of $50,000 directly from points outside Tennessee. Respondent admitted that it has been an employer engaged in commerce.

II. LABOR ORGANIZATION

Respondent admitted that the Charging Party (the Union) has been a labor organization at material times.

III. THE ALLEGED UNFAIR LABOR PRACTICES

At issue are allegations that Respondent engaged in violation of Section 8(a)(1) of the Act by threatening its employees with discharge and other reprisals because the employees supported the Union and that Respondent engaged in violation of Section 8(a)(1) and (3) of the Act by suspending and discharging its employee William John Revis because Revis assisted the Union and engaged in concerted activities.

William R. Peterson, Respondent's interim human resources manager, testified that 330 of Respondent's employees are hourly paid production and maintenance employees. The facility operates 24 hours a day. Shifts run 12 hours a day. Each employee works 3 days on, 3 days off, and rotates between day and night shifts every 6th week.

A. *Did Graham McClean Threaten to Discharge Employees?*

Robert Brown attended one of Respondent's antiunion meetings at the plant on November 3, 1995. Respondent's president and chief operating officer of the magazine, catalogue and retail group, Graham McClean, spoke to team 3. McClean told the employees their work production was down as well as their attitude. McClean stated there was no room in the Dickson plant for the "Revis or Cincinnati attitude." Cincinnati is William Revis' nickname in the plant.

Graham McClean and former general manager, William Mahoney, denied that McClean referred to a Cincinnati or Revis attitude.

Respondent held an antiunion meeting among team 4 employees on November 3, 1995. There was no occasion for employee questions during that meeting and employee Pamela Brown asked if she could meet with Graham McClean. Pamela Brown testified that McClean said there "was no place at Quebecor for people like the Revises and Cochrans." Pamela Brown was aware of two employees named Revis and Cochran. She knew Revis to be a union supporter but she asked McClean to explain his reference to Cochran. Brown did not know Cochran to be a union supporter. Graham McClean said that Cochran had complained about not getting a break on time. He stated that should be the least of Cochran's worries.

Graham McClean did not testify about his conversation with Pamela Brown.

B. *Did Respondent Suspend and Discharge William John Revis Because of the Union?*

Respondent does not dispute that it knew William Revis to be a union supporter. Revis was known to be an outspoken union advocate. He was on the in-plant organizing committees during both the 1994 and the 1995 union organizing campaigns.

Respondent suspended and discharged Revis after he allegedly stared at President Graham McClean in a hostile manner, during the vote count at the 1995 NLRB election. Respondent decided to stick to its decision to discharge Revis even though its fair treatment board reviewed the matter and recommended that Respondent erred and that Revis be reinstated with backpay.

William Revis was employed by Respondent from October 2, 1989, until he was suspended pending termination on No-

vember 8, 1995. At the time of his discharge he was a stacker. His supervisor was Larry Harnish.

Revis was involved in the union organizing committee from early in 1994. The Union mailed Respondent a list of those on the organizing committee including Revis. During the 1994 campaign Revis solicited and received over 20 employees' signatures on union authorization cards. Respondent opposed the Union during that 1994 campaign. An election was held in June 1994. The Union was defeated.

Another union campaign started around the beginning of 1995. Again Revis was on the organizing committee.

During the period before the November 6 and 7, 1995 election, Revis talked with Supervisor Larry Weeks about the Union. Those conversations occurred around September, October, and during the summer of 1995.

On one of those occasions in the plant, Larry Weeks asked Revis if he was sure he wanted a union. Weeks said that if it was a union shop everything would be done by seniority including vacations and off days.

Revis also talked with Hugh Gaylord in the plant about a week before the November 1995 election. Gaylord is head of union contract negotiations for Quebecor North America. The conversation started about other matters but then Gaylord asked if Revis really felt like we needed a union.

Respondent conducted antiunion meetings among its employees. John Revis was excluded from a meeting about a week before the 1995 election.

Robert Brown attended one of Respondent's antiunion meetings at the plant on November 3, 1995. Graham McClean told the employees there was no room in the Dickson plant for the "Revis or Cincinnati attitude."

Graham McClean admitted that he conducted team meetings during the 1995 union campaign. McClean denied that he ever made reference to the Revis or Cincinnati attitude. On cross-examination McClean admitted that he knew that Cincinnati was Revis' nickname.

Respondent's former Dickson general manager, William Mahoney, testified that he and Graham McClean conducted meetings among each of the four employee shifts shortly before the election. He denied that McClean made any reference to William Revis during any of those meetings.

On November 3, 1995, after the team 4 meeting, Pamela Brown asked if she could meet with Graham McClean. Pamela Brown testified that among other things McClean told her there "was no place at Quebecor for people like the Revis and Cochrans."

On November 8, 1995, the day after the NLRB election was lost by the Union, Revis received a phoned mailgram from Respondent:

> You are suspended untill [sic] further notice, without pay, pending termination from Quebecor Printing Dickson. This suspension is effective immediately. The suspension is a result of your making threatening and intimidating statements and demeaning and degrading gestures to other employees, including the President of Quebecor. You will be contacted for an interview during this suspension for investigatory purposes.

During the 2 years before his November 8 suspension Revis only disciplinary action was a written warning dated September 17, 1995. On that occasion it was alleged that Revis uttered an obscenity towards another employee. He was awarded one night's suspension.

Respondent's disciplinary policies are subject to fair treatment board proceedings. Decisions of the fair treatment board are final except in discharge and suspension cases. There the fair treatment board may only make recommendations.

Revis had a fair treatment board hearing on November 28, 1995. At that time Revis saw in his personnel file several things that he had not seen before. Those included a letter from tow motor driver Kay Denton alleging that Revis had used an obscenity when Denton showed up late to pick up a pallet. That letter was dated June 20, 1995. Denton's letter and a letter from Graham McClean were read during the fair treatment hearing. Neither Kay Denton nor Graham McClean was present at the hearing. McClean's letter involved an alleged event during the vote count at the November 6 and 7, 1995 NLRB election. Additionally, employee Lou Robinson testified that Revis had cursed her in 1993 when she was late returning from a break. Robinson testified that during the 1995 union organizing campaign Revis told her, "You'd better fucking support us this time. You know how it is out there, you'd better support us." Revis was referring to the Union.

Although Respondent contended that it relied on all the above incidents in deciding to discharge Revis, there is no dispute that except for the vote count incident, Respondent was fully aware of all those matters well before November 7, 1995.

As shown below, Graham McClean alleged that after it became apparent that the Union was defeated during the November 7 vote count, he made eye contact with Revis and Revis gave him such a hostile look that he decided that Revis should be disciplined.

Revis denied that he made facial expressions as indicated by McClean. Revis testified that he was present for the vote count along with approximately 50 to 70 others. Revis denied that he threatened any employees at that time.

During early December Revis received notice of the fair treatment board decision:

> *PANEL'S RECOMMENDATION*
>
> John Revis should be reinstated with back pay.
>
> *REASON FOR THE RECOMMENDATION*
>
> Based on testimony during the hearing, there was not sufficient evidence nor substantiated testimony to warrant termination.

However, included in the envelope with that notice was a letter of termination.

After the fair treatment decision General Manager Mahoney conducted an investigation. Mahoney learned that Revis had encountered some antiunion employees at a Cracker Barrel restaurant after the vote count. Employee Dana Reeves and Elaine Ross testified about that incident.

Dana Reeves testified that she was at the Cracker Barrel restaurant after the vote count at a table of employees. John Revis was seated at another table with union representatives. Reeves recalled that Revis "pointed toward [her] table and said that, It don't mean a thing to me."

Elaine Ross' back was to Revis and she did not see Revis point his finger at their table. She testified that after Revis left the restaurant he came to the window and gave her a hand salute. She demonstrated the salute as being like a military salute.

Revis admitted that he went to a Cracker Barrel restaurant after the vote count where he saw a group of Respondent's associates seated at a table together.

Respondent's president and chief operating officer of the magazine, catalogue and retail group, Graham McClean, testified in the instant hearing. He testified that after it became apparent during the vote count that the Union would lose he made eye contact with William Revis:

> I made eye contact with Mr. Revis and I would say I was irate and astonished at what ensued. I would say that he met with a facial gesture and we held that eye contact for three to five seconds, I would say. I was uncomfortable and I broke off that eye contact and continued to look forward after that.
>
> . . . .
>
> I would—I mean, it's hard to describe. I would describe it as aggressive, hostile, contemptuous, demeaning, threatening, insubordinate.

Graham estimated that he was 20 feet away from Revis during the time they made eye contact. McClean admitted that Revis never made a verbal threat.

Robert Brown was present at the NLRB vote count. He was able to observe Graham McClean throughout the vote count. He did not notice that McClean did or said anything to indicate that he was concerned about his safety. He did not notice anything unusual about William Revis' facial expressions.

General Manager William Mahoney admitted that he may have had a conversation with Graham McClean immediately after the vote count and he admitted that McClean said nothing to him regarding an incident involving William Revis. Mahoney testified that Revis did not make any type of unusual facial expression that he saw during the vote count.

Mahoney admitted that the investigation into the allegations against Revis revealed no other employee or anyone else that observed anything unusual about Revis' behavior during the vote count.

The parties stipulated there were 42 fair treatment board cases involving everything from discharge all the way down to minor issues and the fair treatment board ruled in favor of Respondent by finding no violation in 26 cases. In 10 other cases the board found a violation. In two cases there were no findings indicated. In two cases the complaints were withdrawn. In two cases the board found violations but because of procedural problems ruled in favor of Respondent. There were four termination and/or suspension cases out of the 42 total.

The parties agreed that in the four suspension or discharge fair treatment board cases the fair treatment board ruled in support of the Employer in two of those cases. The Cook case is in dispute as to whether the board ruled in favor of the Employer. The fourth case was that of William Revis.

There was no evidence that Respondent acted against the recommendation of the fair treatment board before Revis' discharge.

Findings

Credibility

William Revis was not consistent in his testimony. For example his testimony regarding an incident at a Cracker Barrel restaurant revealed that he first denied that he looked back into the restaurant at antiunion employees after leaving the restaurant. Instead he testified that he looked at souvenirs and trinkets. Afterward Revis admitted that he could not see souvenirs and trinkets from that window. Although Revis' account of the Cracker Barrel incident did not materially differ from the accounts given by Respondent's witnesses, his own testimony was inconsistent. To the extent his testimony conflicts with credited evidence I do not credit Revis. In one regard, Revis' testimony conflicts with that of Graham McClean. As to that incident I credit Revis' testimony in view of the full record, the demeanor of Revis during that testimony, the fact that no one corroborated McClean's allegations, and in view of my failure to credit McClean's testimony. I also credit Revis' testimony which was not disputed.

The testimony of Graham McClean was not consistent with other evidence. I find on the basis of his demeanor and the full record that I cannot credit the testimony of McClean to the extent it conflicts with credited evidence. It appeared that McClean's several statements and testimony were exaggerated especially in regard to the incident with Revis at the vote count.

In the November 8, 1995 telegram notifying John Revis of his suspension pending termination, Respondent stated in regard to the vote count incident, that Revis' conduct involved "demeaning and degrading gestures."

In his initial testimony Graham McClean testified that he held eye contact with John Revis for 3 to 5 seconds and that Revis' look was "aggressive, hostile, contemptuous, demeaning, threatening, insubordinate."

On cross-examination McClean testified that:

> it was to me more than a facial gesture. It was an expression of intensity. It was a rage. It was a hostility.

After Respondent notified Revis of his suspension pending termination, in a November 15, 1995 letter to General Manager Mahoney, McClean made the following comments regarding the alleged vote count incident:

> At one point, I happened to glance around the room at the crowd. My thoughts were on the vote count. At one point, I happened to catch the eye of Mr. Revis. He was staring intently at me with a stern, determined, and angry expression on his face. As soon as he saw that he had made eye contact with me, Mr. Revis proceeded to make an overt, dramatized, facial expression towards me. Mr. Revis made no attempt to hide his facial gesture from the other employees present.
>
> The facial expression Mr. Revis made at me is difficult to describe in words. However, in an effort to communicate what his expression looked like to me, I would describe it as being of a menacing, threatening, denigrating, contemptuous and insubordinate nature. Knowing of Mr. Revis' recent suspension for displaying a "temper" and making abusive and intimidating comments to others, his facial expression immediately

> caused me to feel concern for my safety, as well as the safety of the others in the room. Moreover, I felt insulted and offended by Mr. Revis' conduct.

Other than facial expressions there was no evidence that Revis made any demeaning and degrading gestures as alleged in his suspension telegram. McClean was 20 feet away from Revis by his own estimate. Graham McClean admittedly did nothing in the way of providing security for himself or others. He did not inform the NLRB agent or anyone else of his concern at any time proximate to the alleged incident.

I also discredit conflicting testimony from William Mahoney. Even though Mahoney is no longer employed by Respondent his demeanor and testimony illustrated that he favored Respondent's position. Mahoney's testimony regarding the discharge decision does not square with other evidence. For example, Mahoney admitted that he did not discuss the alleged vote count incident with Graham McClean until the day after the vote count. That testimony squares with that of Graham McClean who testified that after the vote count he was told that Mahoney had gone home. However, as shown herein there was undisputed evidence that Respondent's supervisors learned on the day of the vote count that Revis was being discharged. Moreover, Mahoney testified that in deciding to discharge Revis he relied in part, on an incident at a Cracker Barrel restaurant. However, the evidence presented by Respondent regarding what actually happened at the Cracker Barrel failed to support Mahoney's testimony that Revis engaged in conduct that contributed to his discharge. In view of the record and his demeanor, I do not credit the testimony of William Mahoney.

Robert Brown's testimony that McClean told the team 3 employees that the Company had no place for the Revis or Cincinnati attitude, conflicted with that of McClean and Mahoney. Respondent called several employees as witnesses but none of those employees testified in conflict with Robert Brown. James Parker worked on the same team, team 3, but he testified that he did not attend the McClean meetings. Kay Denton testified that McClean did not identify any employees in his speech but she attended the team 2 meeting rather than team 3 attended by Robert Brown. Elaine Ross also recalled that McClean did not identify any employees when he addressed her team. However, Ross like Denton, was also at the team 2 meeting rather than the meeting attended by Robert Brown. I was impressed with Brown's demeanor. On that basis and the full record I credit his testimony.

I also credit the testimony of Pamela Brown. Her testimony regarding her meeting with Graham McClean was not disputed. I credit her testimony in view of her demeanor and the full record.

In view of their demeanor and the record, I find the testimony of Harold Berens and Jim Gamel was credible.

Conclusions

A. *The 8(a)(1) Allegations*

As shown above, I credit the testimony of Robert Brown and Pamela Brown. That testimony shows that Graham McClean told employees there was no room in the Dickson plant for William Revis. In the situation with Robert Brown, McClean told a full team of employees on November 3, 1995, that there was no place in the Dickson plant for the Revis or Cincinnati attitude. Cincinnati is the nickname of William Revis.

Pamela Brown had a conversation in an office with Graham McClean on that same day, November 3, 1995. McClean told Pamela Brown there was no place in Quebecor for people like Revis and Cochran.

I find those comments had the tendency to warn employees that strong union supporter William Revis would be terminated. The record shows that McClean was unhappy because Revis was outspoken for the Union. McClean's comments constitute violations of Section 8(a)(1) of the Act. *A. O. Smith Automotive Products Co.*, 315 NLRB 994 (1994); *Stalwart Assn.*, 310 NLRB 1046 (1993); and *Sheraton Hotel Waterbury*, 312 NLRB 304 (1993).

B. *The 8(a)(3) Allegations*

As to the alleged violation of Section 8(a)(1) and (3) by suspending and discharging William Revis because of his union activities, I shall first examine whether the General Counsel proved that Respondent acted out of union animus in suspending and discharging Revis. *Manno Electric*, 321 NLRB No. 43 fn. 12 (May 22, 1996); *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); and *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

The Board has held:

> . . . in order to establish a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel must establish (1) that the alleged discriminatees engaged in union activities; (2) that the employer had knowledge of such; (3) that the employer's actions were motivated by union animus; and (4) that the discharges had the effect of encouraging or discouraging membership in a labor organization. [*Electromedics, Inc.*, 299 NLRB 928, 937, affd. 947 F.2d 953 (10th Cir. 1991).]

The evidence is not in dispute that Revis was deeply involved in the union organizing campaign and that Respondent was fully aware of Revis' activity supporting the Union.

Respondent admitted that it knew that Revis supported the Union. Graham McClean testified that Revis stood out in his mind from the 1994 union campaign because Revis insisted on making prounion remarks at the conclusion of company meetings even though employees were not permitted to ask questions.

The record included a showing of animus. As shown herein, Respondent engaged in violations of Section 8(a)(1) of the Act and it engaged in objectionable conduct. That evidence included comments by Respondent's president that Respondent had no place for Revis because of his attitude.

Moreover, the evidence is not in conflict that Respondent decided to discharge William Revis on the last day of the NLRB election after the vote count. Employee Pamela Brown testified that she was told by Quality Control Manager Steve Tomlin that he was told in a staff meeting on the day of the vote count, that Revis was being terminated and that Revis would be getting notice of the termination "pretty soon." Brown's testimony was not disputed.

Revis received notice of his suspension pending discharge, the following day.

Revis filed a fair treatment board grievance. Human Resource Supervisor Mary Bordwell was told by her supervisor that Revis had been suspended because he made a facial expression toward Graham McClean during the vote count. Two weeks before the November 28 fair treatment board hearing Bordwell was told that she was to present Respondent's case at the hearing. She then started her investigation. During that investigation she examined Revis' personnel file and she interviewed other employees regarding the alleged incident during the vote count. Bordwell testified that she was unable to find anybody who saw the alleged incident between Revis and McClean.

During the fair treatment hearing Bordwell presented evidence including Graham McClean's written account of the alleged vote count incident. She also presented a June 1995 letter from employee Kay Denton, documentation regarding a September 1995 incident for which Revis received a 1-day suspension, and testimony by employee Lou Robinson.

Subsequently the fair treatment board ruled in favor of Revis and recommended that he be reinstated with backpay.

General Manager Mahoney testified that he conducted an investigation. During that investigation he discovered there had been an incident involving Revis and some antiunion employees at a Cracker Barrel restaurant on November 7, 1995. As shown above, employees Dana Reeves and Elaine Ross testified about the Cracker Barrel incident. Mahoney testified that he relied on that incident, in part, in deciding to discharge Revis.

I am convinced on the basis of the above and the full record that Respondent made a final decision to suspend and discharge Revis on November 7, 1995. The testimony of Pamela Brown shows that the discharge decision was made on November 7. On that day she was told by her supervisor that Revis had been discharged. The testimony of Mary Bordwell proved that the discharge decision was made before she conducted her investigation and decided to use evidence regarding employees Kay Denton and Lou Robinson. Respondent did not ask Bordwell to conduct an investigation and present Respondent's case to the fair treatment board until approximately a week after November 7, 1995. The credited evidence failed to support William Mahoney's testimony that he made the discharge decision. Mahoney testified that he did not discuss the alleged vote count incident with Graham McClean until November 8. McClean testified that he was told after the vote count that Mahoney had gone home. That tends to show that Mahoney was not involved in the discharge decision at a time before the supervisors were told that Revis was being discharged.

The record shows that Respondent enlarged on the reasons for the discharge by adding matters that had occurred well before November 7. Subsequently evidence was presented to the fair treatment hearing regarding Revis' September 1995 1-day suspension, a June 1995 incident with Kay Denton, and two confrontations with employee Lou Robinson. After the fair treatment board decision General Manager Mahoney discovered that an incident occurred at a Cracker Barrel restaurant after the vote count on November 7, 1995. He testified that incident contributed to his decision to discharge Revis despite the fair treatment decision.

Respondent in its brief also pointed to a warning from Revis' file dated October 20, 1992, regarding Revis and employee Charlie Tidwell. However, Respondent and all parties stipulated that in making the discharge decision Respondent did not consider anything that occurred earlier than 2 years before Revis' suspension. That was in accord with Respondent's practice. Obviously, October 20, 1992, is over 3 years before November 7, 1995.

I find that Respondent knew that Revis was a strong advocate of the Union and that Respondent acted out of union animus in suspending and discharging Revis.

I shall consider whether the evidence proved that Respondent would have suspended and discharged Revis in the absence of the union activities.

As shown above I find that Respondent was not motivated to suspend and discharge Revis because of matters not involving the Union, which occurred before November 7 and matters discovered by Mary Bordwell and William Mahoney during their respective investigations.

The credited testimony of Pamela Brown proved that Respondent decided to terminate Revis on November 7. That was at least a week before Mary Bordwell first examined Revis' file in preparation of the fair treatment board hearing and Bordwell admitted that Revis was discharged because of the November 7 incident with Graham McClean.

Moreover, the record shows that Respondent was aware of the incidents involving Lou Robinson, Kay Denton, and Revis' 1-day suspension in September, long before it elected to suspend and discharge Revis on November 7. None of those incidents had caused Respondent to take any disciplinary action against Revis other than the September 1995 1-day suspension. The final alleged consideration of General Manager Mahoney, the alleged incident at the Cracker Barrel restaurant, was shown to be insignificant by Respondent's own witnesses. Despite the uncorroborated hearsay testimony of William Mahoney, the direct testimony of employees Dana Reeves and Elaine Ross proved that Revis did not engage in misconduct at the Cracker Barrel restaurant.

I find that Respondent failed to prove that it would have suspended and discharged Steve Revis in the absence of union activity. *Balboa Ambulance*, 313 NLRB 745 (1994).

There is an additional matter of concern. There is also a question of whether Respondent violated Section 8(a)(1) of the Act by suspending and discharging Revis. It is apparent from the record as shown herein, that the event that precipitated Revis' suspension and discharge, occurred during the NLRB election vote count. Revis an acknowledged union supporter, allegedly reacted to a vote count in a way that offended Respondent's president. Additionally, Respondent pointed to four or five other incidents as contributing to Revis' discharge including two that cause concern. Those include an alleged incident during the union campaign and an alleged incident at a Cracker Barrel restaurant after the vote count. Revis allegedly told employee Lou Robinson during the union campaign, "[Y]ou'd better fucking support us this time. You know how it is out there, you'd better support us." At the Cracker Barrel Revis was seated with union representatives when he told other employees that the vote did not mean anything to him.

I am concerned as to whether Revis' alleged conduct on any of those occasions involved protected activity.

Whenever an employee is disciplined for protected activity the employer is required to show it had an honest belief that the employee was engaged in misconduct. If the employer proves it had an honest belief that the employee was engaged

in misconduct the General Counsel may prove that the employee did not actually engage in the claimed misconduct. (*Rubin Bros. Footwear*, 99 NLRB 610 (1952); and *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964).)

If Revis was involved in protected union conduct when he appeared at the vote count on November 7; or during the Cracker Barrel incident; or when he told Lou Robinson that she had better support the Union; then the applicable standard would require a showing that Respondent reasonably believed that Revis engaged in misconduct. I am convinced that employees that observe a NLRB vote count are engage in protected activity. By simply being there employees are openly demonstrating their interest and possible involvement in whether a Union is or is not selected as their voting representative. Obviously, an employer may not discharge or otherwise discipline an employee because the employee attended the NLRB vote count.

Additionally, I find that Revis was engaged in protected activity at the Cracker Barrel restaurant when he told employees that the election did not mean anything to him and I find that he was engaged in protected activity when he allegedly told Lou Robinson that she had better support the Union.

Even though Revis was involved in protected activity he may not engage in misconduct with impunity. In line with the *Rubin Bros.* standard, I shall question whether Respondent had a good-faith belief that Revis did engage in misconduct. Here, I find that Respondent failed to prove that it had a reasonable belief that Revis engaged in misconduct during the November 7 vote count or during the incident at the Cracker Barrel restaurant. I do not credit the only testimony regarding the vote count that tended to show misconduct by Revis and, as to the alleged Cracker Barrel incident, I find that Respondent's witnesses to the event proved that allegation was without foundation. The direct evidence illustrated without dispute, that Revis did not engage in misconduct at the Cracker Barrel restaurant.

As to the alleged incident with Lou Robinson, she testified that it was not unusual for Revis to tell her that she had better not be late during the time when Revis relieved her for her break. Robinson testified that he would frequently tell her that she had better not be late this time with "cuss" words in there. Additionally, the record is not in dispute that Revis and other employees frequently used profanity in the plant. In view of the record, I am convinced that Revis' conduct in telling an employee that she had better do something like not be late and his frequent cursing were tolerated by Respondent until it decided to discharge him. At that time it decided to use the alleged incident involving Lou Robinson. The only distinguishing factor between that incident and earlier incidents was that the incident involved the Union. Unlike other occasions Revis told Robinson that she had better support the Union. In determining whether an employee engaged in misconduct, it is necessary to consider what is tolerated in the plant. Matters that are routinely tolerated even though they may constitute misconduct in other settings, do not qualify as misconduct. I find that Revis did not engage in misconduct with Lou Robinson during the 1995 union campaign.

The second prong of the *Rubin Bros.* test would enable the General Counsel to show that Revis did not actually engage in misconduct. Here, I find that the evidence proved that Revis did not engage in misconduct at the vote count, at the Cracker Barrel restaurant or during an encounter with employee Lou Robinson. I make that finding on the basis of Revis' credible denial that he made a derogatory facial expression; that nothing was said of done by McClean during the vote count which illustrated that he was genuinely concerned with his safety plus the evidence that no one other than McClean noticed anything unusual in Revis' actions. As to the Cracker Barrel incident I find there was no probative evidence that Revis engaged in misconduct. Regarding the Lou Robinson incident, I find that Revis did nothing on that occasion that had not been tolerated by Respondent on similar occasion when the Union was not involved.

In view of the above and the full record, I find that Respondent engaged in violative conduct by suspending and discharging William Revis.

Objections

The Union filed its Case 26–CA–7760 petition on September 21, 1995. An election was held on November 6 and 7, 1995. Following objections filed by the Union, the Acting Regional Director issued a Report on Objections.

That report directed that I hear the Petitioner's objections including allegations that the Employer interrogated unit employees regarding the Union; that the Employer discriminatorily enforced a no solicitation rule; that the Employer unlawfully aided antiunion employees; that the Employer threatened to and did take adverse action against employees because of their union activity; that the Employer polled employees regarding their union support; that the Employer threatened employees with loss of jobs if they selected the Union; that the Employer illegally solicited employee grievances and promised benefits in order to persuade employees to vote against the Union; and that the Employer granted benefits to unit employees in order to persuade the employees to vote against the Union.

In support of its objections the Union offered documents that Respondent distributed to unit employees during the period after the Union filed its representation petition and before the election.

The Union offered evidence in support of the following.

Interrogation

Pamela Brown testified that a week or two before the 1995 NLRB election Supervisor Bill Wyman asked her why did she think they needed a union. Wyman asked Brown to change her mind and vote against the Union.

Pamela Brown admitted that she was on the in plant organizing committee in 1994. Respondent had been notified that Brown was on that committee. She had never spoken to Bill Wyman about her favoring the Union but she had told other employees that she favored the Union.

Finding

Under the circumstances I find that Supervisor Wyman's questioning of Brown did not constitute objectionable conduct. Pamela Brown was an open union supporter and that position was known to Respondent. Wyman and Brown were friends and their conversation did not involve coercion. *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom.

Hotel & Restaurant Employees Local 11 v. NLRB, 760 F.2d 1006 (9th Cir. 1985).

No Solicitation

Aid to Antiunion Employees

Respondent's solicitation and distribution rule is stated in its employee handbook:

> In the interests of efficiency and safety and to minimize peer pressure, employees may not engage in distribution of materials or solicitation of any kind in work areas. Such activities may occur only during mealtime and break periods away from work areas.

The Union offered testimony that Respondent permitted a "Think Twice Committee" to distribute antiunion T-shirts, caps, paraphernalia, and cookies to employees in the plant during the 2-week period before the election.

James Gamel testified that he observed the think twice committee passing out antiunion literature in the plant during the 2-week period before the 1995 election. They were in the cafeteria between 11:30 a.m. and 2 p.m. The committee had a table where they had T-shirts and hats. When Gamel walked by he was offered a T-shirt, a hat and a cookie.

Pamela Brown testified that the think twice committee passed out union paraphernalia in the plant cafeteria and passageways about a week before the 1995 election. Brown testified that there were employees and one nonemployee that was a spouse of an employee, passing out the paraphernalia for the think twice committee.

Brown also testified that she saw both Graham McClean and Peggy Fielder at the think twice committee table. Fielder was at the committee's table while it was in the plant at the Hollywood and Vine passageways.

Former general manager, William Mahoney, was familiar with the think twice committee. He was asked if they could put a group in the lunchroom. He permitted them to use the lunchroom but testified that if the Union had asked he would have permitted the same thing of them. However, the Union never did ask.

On one occasion William Mahoney saw the think twice committee in the plant near a major intersection of passageways. After checking with his attorneys, he directed that the committee be told to move from that area.

Finding

The evidence proved that Respondent permitted the think twice committee to solicit opposition to the Union in both work and nonwork areas of the plant. Even General Manager Mahoney testified that he belatedly determined that it was improper to allow the committee to set up shop in a major passageway in the plant. Pamela Brown testified without dispute that Graham McClean and Personnel Administrator Peggy Fielder were present while the think twice committee was set up in the plant. Fielder was present while that committee was in the hall passageways inside the plant work area. There was also evidence that the committee made notations on a pad when employees refused to accept antiunion materials. Pamela Brown testified that employee Jimmy Andrews wrote something on a list when she rejected the think twice committee's offer of antiunion paraphernalia and she thought it was her name he had written. Jimmy Andrews did not testify and Brown's testimony is unrebutted as to Andrews' actions. Employees Reeves and Ross, testified they were on the think twice committee and the committee did not maintain lists of employees that rejected antiunion materials.

Even though Respondent never denied the Union use of its cafeteria and passageways to set up prounion distribution, employees were never advised that the Union would receive the same treatment as the think twice committee. In view of Respondent's announced position of opposition to the Union, it was reasonable for the employees and the Union to assume they would be denied an opportunity to distribute prounion materials in the plant. I find Respondent's conduct regarding the think twice committee constitutes objectionable conduct. *Scientific Atlanta*, 278 NLRB 467 (1986); and *A. O. Smith Automotive Products*, 315 NLRB 994 (1994).

Threatened Loss of Jobs

As shown above Robert Brown attended one of Respondent's antiunion meetings at the plant on November 3, 1995. Graham McClean stated there was no room in the Dickson plant for the "Revis or Cincinnati attitude."

Graham McClean and William Mahoney denied that McClean referred to a Cincinnati or Revis' attitude.

Respondent held an antiunion meeting among team 4 employees on November 3, 1995. There was no occasion for employees' questions during that meeting and Pamela Brown asked if she could meet with Graham McClean. Pamela Brown testified that during their meeting McClean said among other things that there "was no place at Quebecor for people like the Revis' and Cochran's."

Graham McClean did not testify about his conversation with Pamela Brown.

As shown above Respondent distributed leaflets to employees during the union campaign. Those leaflets labeled shocking facts about the union include in one, "Look!! Look at the GCIU's pitiful record at: Vern Wood [closed]!, Fridley [closed]!, Buffalo (600 jobs to be lost)!, Nashville & Clarkesville (lower wages & benefits than at Union Free Dickson)!"

In a leaflet dated October 23, 1995, the following was included:

> GCIU membership losses also can be traced to lost jobs from plant closings. The people who worked at those plants learned the hard way that a union *does not secure jobs*. Because union-led strikes or other types of labor problems can interfere with the on-time delivery of quality books, a union can make jobs *less secure*. The only true job security comes from working together to exceed our customers' expectations.

Findings

As shown above I find that McClean's comments as testified by Robert and Pamela Brown constitute violation of Section 8(a)(1) of the Act. Those comments occurred during the critical period and constitute objectionable conduct. Respondent held out to its employees that it had no place for strong union supporter William Revis. The comments about there being no place for Revis constituted a threat of discharge. The leaflets distributed by Respondent contributed to it message to employees that their jobs were less secure with

a union on the scene. An employer's preelection communication to its employees must not contain a threat of reprisal or force or promise of benefit. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969); *Long-Airdox Co.*, 277 NLRB 1157 (1985); and *Dominion Engineered Textiles*, 314 NLRB 571 (1994).

Soliciting Grievances

Granting Benefits

Harold Berens, who has worked for Respondent for over 7 years, is a crew leader on receiving team 4. Berens testified about conversations he had with Graham McClean at his work area in the plant before the November 6 and 7, 1995 election. McClean asked Berens how things were going and what could he do to help the employees with any problems they had in regard to favoritism and that sort of thing. Jim Gamel was also present. Berens testified under cross that after he told McClean about some of their problems, McClean told him that if he voted no they would fix the problems.

James Gamel also testified that Graham McClean came into his work area several times before the November 1995 election. McClean asked the employees if there was anything he could do to make things better in the plant and in Gamel's department.

In addition to McClean, the controller came back and asked Berens about equipment problems. Although McClean and the controller came back into Berens' work area on numerous occasions before the election, that was unusual and they have not returned after the election.

McClean recalled having a conversation with Berens. He denied that he told Berens that he was willing to fix problems depending on the union vote.

Pamela Brown recalled a team meeting before the 1995 election during which Graham McClean spoke to the employees. McClean told the employees that he would be down after the election, once a month, to talk to anybody about any problems or anything the employees wanted to discuss.

On October 25, 1995, Respondent wrote to its employees and their families. Among other things the letter included the following:

> As we consider the issues involved in our election, I think it is important to reflect on the type of economic and job security that the Dickson team members have enjoyed over the years. I'm sure that most people would agree that Quebecor Dickson provides a very competitive wage and benefit package. In fact, I've heard some say that it is one of the best in this community, and I know that it is one of the best in the entire printing industry.
>
> Additionally, the Dickson plant has a history of making steady improvements in its benefits package. In this regard, you soon will be receiving some information about an important new optional feature that Quebecor is adding to the health care coverage.

Personnel Administrator Peggy Fielder admitted there was a change in the employees' health care insurance:

> The change was the addition of a PPO to the indemnity portion, or the indemnity option that the employees have for their medical insurance.
>
> . . . .
>
> The discussions that there would be a change had been on-going through the year. I became aware of it—it was definitely going to happen, some time in August (1995). We had been talking about it and then in August there was a meeting scheduled to give us the details of how that change would take place.
>
> . . . .
>
> A meeting was scheduled for September 13th to meet with CIGNA who is the insurer to—among the benefits people to talk about how that change would be made.

Fielder testified that it was necessary to advise the employees of the change in health coverage before the election because the open season for health care selection started on November 15 and lasted until only December 15, 1995.

Findings

As shown above, I credit the testimony of Harold Berens and Jim Gamel. Berens testified that after inquiring about their problems on the job, Graham McClean told Berens that he would fix those problems if Berens voted against the Union. Both Berens and Gamel testified that McClean and the controller asked them about problems at their work during the critical period. That conduct was unusual. Neither McClean nor the controller normally visited Berens and Gamel at their work. I find that conduct constitutes objectionable conduct.

Additionally, I find that Respondent engaged in objectionable conduct on October 25 when it wrote unit employees and promised improved benefits. The record including the testimony of Personnel Administrator Peggy Fielder failed to show that it was necessary to advise the employees of improved health care benefits before the November 1995 election. That is especially true where, as here, Respondent included the announcement of improved benefits in an antiunion leaflet.

The open enrollment period did not begin until a week after the election and Respondent failed to prove that it would have been unreasonable to advise the employees of any changes at the time of the open enrollment period.

I find that Respondent's conduct during the critical period has a reasonable tendency to interfere with the employees' exercise of their free choice and thereby affects the outcome of the election. *Sony Corp.*, 313 NLRB 420 (1993). Accordingly, I recommend that the election be set aside and Case 26–RC–7760 is remanded to the Regional Director to conduct a second election.

Conclusions of Law

1. Quebecor Printing Dickson, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Graphic Communications International Union, AFL–CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent, by threatening its employees that there was no place in it for the Revis' attitude has engaged in conduct violative of Section 8(a)(1) of the Act.

4. Respondent by suspending and discharging its employees William John Revis because of his union affiliation and preference has engaged in conduct violative of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6), (7), and (8) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent has illegally reprimanded and discharged William Revis in violation of Sections of the Act, I shall order Respondent to offer Revis immediate and full employment to his former position or, if that position no longer exists, to a substantially equivalent position. I further order Respondent to make William Revis whole for any loss of earnings suffered as a result of the discrimination against him. Backpay shall be computed as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Quebecor Printing Dickson, Inc., Dickson, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees that it has no place for an employee that supports the Union.

(b) Suspending and discharging its employees in order to discourage its employees from engaging in union activities.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of this Order, offer William Revis immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position without prejudice to Revis' seniority or any other rights or privileges previously enjoyed.

(b) Make William Revis whole for any loss of earnings and other benefits he suffered as a result of Respondent's unlawful suspension and discharge plus interest, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge of William Revis, and within 3 days thereafter notify Revis in writing that this has been done and that the suspension and discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records, reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Dickson, Tennessee, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 8, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees that we have no place for an employee that supports the Graphic Communications International Union, AFL–CIO, CLC or any other labor organization.

WE WILL NOT suspend and discharge our employees in order to discourage our employees from engaging in union activities.

WE WILL, within 14 days from the date of the Order, offer William John Revis full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make William John Revis whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest.

WE WILL, with 14 days from the date of the Order, remove from our files any reference to the unlawful suspension and discharge of William John Revis and WE WILL, within 3 days thereafter, notify Revis in writing that this has been done and that the suspension and discharge will not be used against him in any way.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the Act.

QUEBECOR PRINTING DICKSON, INC.